IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 9TH NOVEMBER 2006 / 18TH KARTHIKA 1928

MFA.No. 1038 of 1999()

OA.53/1998 of FOREST TRIBUNAL, KOZHIKODE
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APPELLANTS/APPLICANTS:
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1. BAPPU KURIKKAL
   S/O.MAKKUTTIL KURIKKAL
   KULA ROAD
   VAVULLIAPURAM AMSOM DESOM
   P.O.VAVULLIYAPURAM
   ALATHUR TALUK
   PALAKKAD DISTRICT (DIED)

2. MOOSAKUTTI KURIKKAL
   S/O.LATE MAKKUTTI KURIKKAL
   KULA ROAD
   VAVULLIAPURAM AMSOM DESOM
   ALATHUR TALUK, PALAKKAD DISTRICT.

3. BEEVIKUTTY, W/O. LATE BAPPU KURIKKAL, AGED 65
   RESIDING IN KULARODE HOUSE,
   VAVULLIAPURAM AMSOM DESOM
   P.O.VAVULLIAPURAM, ALATHUR TALUK
   PALAKKAD DISTRICT.

4. MUHAMMED KHANI, S/O. -DO- AGED 43, IN -DO-

5. ATHIKKA, D/O. -DO- AGED 37, IN DO.

6. RUKKIYA, D/O. -DO- AGED 31, IN DO

7. MUTHALIFF, S/O. -DO- , AGED 28

8. RASHEED, S/O. -DO- AGED 19, IN DO

ADDITIONAL APPELLANTS 3 TO 8 ARE IMPLEADED VIDE ORDER DTD.26.9.06 ON I.A.1670/04

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.P.B.KRISHNAN
SRI.S.V.BALAKRISHNA IYER
SRI.P.B.KRISHNAN

RESPONDENTS/RESPONDENTS:
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1. THE STATE OF KERALA
   REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
   THIRUVANANTHAPURAM.

2. THE CUSTODIAN OF VESTED FORESTS
   OLAVAKKODE, PALAKKAD.

3. SIDDIQUE, S/O. LATE BAPPU KURIKKAL, AGED 34,
   NOW AT P.B.NO.90143, RIYADH, 11613, K.S.A.

4. JABBAR, S/O. -DO- AGED 25, NOW AT 8035246, 1806 PNR COY.,
   C/O. 56 A.P.O.

ADDITIONAL RESPONDENTS 3 AND 4 IMPLEADED VIDE ORDER DTD. 26.9.06 IN I.A. NO. 1670/04.

BY SPL.GOVT.PLEADER (FOREST)
SRI.M.K.SREEGESH

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 09/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & M.N. KRISHNAN, JJ.

M.F.A. NO. 1038 OF 1999

Dated this the 9th day of November, 2006.

JUDGMENT

KRISHNAN,J.

This is an appeal preferred against the order of the Forest Tribunal, Kozhikode in O.A.No.53/98. The claimants have applied before the Forest Tribunal for exemption of the land of 4.93 Acres under Section 3(2) of the Kerala Private Forest (Vesting and Assignment) Act, 1971.

2. It is the contention of the claimant that the property was taken on lease along with the paddy flat, about 70 years ago with a stipulation to pay an annual rent of 281 paras of paddy. It is submitted that the property was taken on lease by Sivaramakrishnan and subsequently rent was paid and exhibits A1 to A3 are the receipts to evidence the same. The Tribunal did not accept Exts. A1 to A3 as genuine because it felt, it has come into existence under suspicious circumstances. Admittedly, the appellants are having landed property wherein paddy is cultivated and he had filed an application for certificate of

purchase and the Tribunal has granted the same and there is stipulation to pay 281 paras of paddy and no other cash or kind. In order to prove Exts. A1 to A3, as the only son of landlord is not alive, his son-in-law was examined who is described as a respectable doctor. His evidence appears to be trustworthy and we do not find any circumstances to doubt the genuineness of Exts. A1 to A3. In Palakkad district, large extent of properties are given on lease by oral arrangement and receipt of rent are acknowledge by giving rent receipts. Unless there are large number of holdings and tenants no registers are maintained. Therefore, that is not a circumstance to disbelieve the evidence of the PW1 & PW2 to hold that there is no lease with respect to the property. The crucial point to be considered is whether on 10.5.71 there was cultivation of the property as contended by the applicants. Ext. C1 is the commissioner's report. The commissioner who visited the property had described it as uneven paramba having downward slope from east to west. He has also stated that in about 5 cents of land chilly plants are seen and the land is divided into several flats almost about 20 in

number. Bushes and undergrowths were seen in the said property. The Tribunal opined that since there is no separate enclosure for this property, it has to be taken as a property not being enjoyed by the applicant. It has to be born in mind that this is a paramba, which is lying in different tiers and naturally the level difference operate as a separating boundary for the separate entity and the mere absence of a compound wall would not show that it is not cultivated by a person. If really, the land claimed was a private forest, as contended by the respondents, there would have been some trees of wild growth or jungle trees. To evidence the same, no single tree is seen there in the property. Further, the commissioner has described it as paramba (land) which would indicate the factor that it is being used for cultivation. Unless the property is usually cultivated, one will not be able to find the cultivation of chilly plant which is a seasonal cultivation. The commissioner was able to see the cultivation of Tapioca which also generally done in the property which is lying just above the paddy flat. The commissioner's report that the property is a paramba, without the presence of

any trees of wild growth indicates that it was not a forest. The evidence available indicates that the land is cultivated prior to 10.5.1971 and they are not having any land in excess of the ceiling area and the appellants are entitled to get it exempted under Section 3(2) of the Act.

3. Therefore, we hold that the Tribunal has not analyzed the evidence in the correct perspective in the background of the commissioner's report which is an independent piece of reliable evidence to arrive at a decision. We also accept the evidence of PW1 & PW2 in this regard which does not suffer any serious infirmity. Therefore, the order passed by the Forest Tribunal is set aside and the appeal is allowed and the appellants are granted exemption of this 4.93 acres as claimed by them under Section 3(2) of the Act.

Appeal disposed of accordingly.

J.B. KOSHY, JUDGE.

M.N. KRISHNAN, JUDGE.

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